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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR A DECLARATORY
ORDER REGARDING BILL ESTIMATION
PROCEDURES

Docket No. E-01345A-03-0775

**ARIZONA PUBLIC SERVICE
COMPANY'S RESPONSE TO AVIS
READ'S MOTION TO INTERVENE**

Arizona Public Service Company ("APS"), the Applicant in this matter, hereby responds to Avis Read's Motion to Intervene. APS has no objection to Read's Motion to Intervene to the extent that Ms. Read seeks to intervene as an individual customer of APS. APS objects to the motion, however, to the extent that Read seeks to intervene on behalf of a purported "Class." The Arizona Corporation Commission ("Commission") rules do not permit a "Class" to intervene in this matter.¹ Moreover, the Commission has not historically entertained class actions in the same sense as have civil courts. *See* Ariz. R. Civ. P. 23 (class actions are judicially created actions); *see also* *Carpinteiro v.*

¹ Although Ariz. Admin. Code R14-3-105(C) provides that at a hearing officer may determine for purposes of a hearing that two or more individual persons who have intervened in a case constitute a class, this rule does not permit an unidentified and amorphous "class" to intervene in a Commission matter nor does it invoke all the procedures and substantive rights created by the Civil Rules.

1 *Tucson School Dist. No. 1 of Pima County*, 1 Ariz. App. 283, 501 P.2d 459 (1972)
2 (certification of class is matter for trial court). Finally, although Read has filed in
3 Maricopa County Superior Court an action that is entitled as a class action, no class has
4 yet been certified in that case.²

6 Thus, the Commission should deny Read's request to intervene in this matter on
7 behalf of any purported Class or other individuals.³

8 RESPECTFULLY SUBMITTED this 5th day of March, 2004.

10 PINNACLE WEST CAPITAL
11 CORPORATION LAW DEPARTMENT

12
13 By: Thomas L. Mumaw
14 Thomas L. Mumaw
15 Attorney for Arizona Public Service
16 Company

22 ² Read has filed a motion to certify the class in the pending Superior Court litigation, but APS
23 has filed a response opposing such certification.

24 ³ Even if the Commission permits Read to intervene, Read is permitted to address only the
25 issues included in APS' Application. Ariz. Admin. Code R-14-3-105(B) (no application for
26 leave to intervene shall be granted if the issues presented will be unduly broadened). Read,
therefore, is not permitted as an intervenor to raise other issues with the Commission that that
are outside the scope of APS' Application.

1 The original and 13 copies of the foregoing
2 filed this 5th day of March, 2004 with:

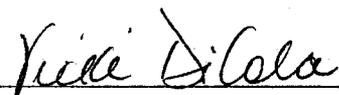
3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007.

7 And a copy of the foregoing
8 served via U.S. Mail this
9 5th day of March, 2004, to:

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